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MT LEGISLATIVE HISTORY

Chapter 803 1991

Bill H _____ S 246 Original bill & hist. ✓C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
3/13	✓C	2/14	~~C~~
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 4/4	✓C	2/16	~~C~~

Did this bill originate in an interim committee? ___Yes ~~✓~~No

Committee _____ Report _____

SENATE BILL NO. 246

INTRODUCED BY NATHE, MERCER, MAZUREK, BLAYLOCK
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

IN THE SENATE

JANUARY 31, 1991 — INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.

FEBRUARY 1, 1991 — FIRST READING.

FEBRUARY 16, 1991 — COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.

FEBRUARY 18, 1991 — PRINTING REPORT.

SECOND READING, DO PASS AS AMENDED.

FEBRUARY 19, 1991 — ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 49; NOES, 1.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 — INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.

FIRST READING.

APRIL 4, 1991 — COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

APRIL 6, 1991 — SECOND READING, CONCURRED IN.

ON MOTION, RULES SUSPENDED AND BILL PLACED ON THIRD READING THIS DAY.

THIRD READING, CONCURRED IN.
AYES, 95; NOES, 2.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 6, 1991 — RECEIVED FROM HOUSE.

APRIL 17, 1991	SECOND READING, AMENDMENTS NOT CONCURRED IN.
	ON MOTION, CONFERENCE COMMITTEE REQUESTED.
APRIL 19, 1991	CONFERENCE COMMITTEE APPOINTED.
	IN THE HOUSE
APRIL 20, 1991	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE SENATE
APRIL 23, 1991	ON MOTION, CONFERENCE COMMITTEE DISSOLVED.
	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE HOUSE
APRIL 24, 1991	ON MOTION, CONFERENCE COMMITTEE DISSOLVED.
	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE SENATE
APRIL 24, 1991	FREE CONFERENCE COMMITTEE REPORTED.
APRIL 25, 1991	ON MOTION, RULES SUSPENDED AND BILL PLACED ON SECOND READING THIS DAY.
	SECOND READING, FREE CONFERENCE COMMITTEE REPORT REJECTED.
	ON MOTION, FREE CONFERENCE COMMITTEE DISSOLVED.
	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	FREE CONFERENCE COMMITTEE REPORTED.
	IN THE HOUSE
APRIL 25, 1991	ON MOTION, FREE CONFERENCE COMMITTEE DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 29, 1991

SECOND READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 29, 1991

FREE CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 29, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 246

INTRODUCED BY NATHE MERCER Thayne Shyl-L

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE TERMINATION DATE FOR LIMITATIONS ON GOVERNMENTAL LIABILITY FOR DAMAGES IN TORT ACTIONS; AMENDING SECTION 1, CHAPTER 228, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 1, Chapter 228, Laws of 1987, is amended to read:

"Section 1. Section 9, Chapter 22, Special Laws of June 1986, is amended to read:

"Section 9. Effective dates ~~---termination-date~~. This act is effective on passage and approval, except that section 3 is effective July 1, 1991. ~~Sections-1-and-2-of this-act-terminate-on-June-30,-1991.~~""

NEW SECTION. **Section 2.** Effective date. [This act] is effective on passage and approval.

-End-

Montana Legislative Council

INTRODUCED BII
SB 246

CHAIRMAN--RICHARD PINSONEAULT
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: M,T,W,T,F TIME: 10:00 A.M.

SECRETARY-JOANN BIRD

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT-
SB0201	1/25	2/04		DO PASS		2/05
BROWN, BOB			REQUIRE COUNTY ATTORNEY TO SERVE AS LEGAL ADVISER TO FIRE SERVICE AREAS			
SB0203	1/25			TABLED ON 02/20		
HARDING, ETHEL			REQUIRE COUNTY-EMPLOYED COURT REPORTERS TO DEPOSIT FEES WITH COUNTY			
SB0204	1/25	2/08		PASS AS AMENDED		2/12
GAGE, DEL			PROVIDE ALTERNATIVE SENTENCING FOR FELONY OFFENSES RELATED TO DANGEROUS DRUG			
SB0208	1/28	2/11		ADVERSE RPT ADOPT		2/12
NATHE, DENNIS			AUTHORIZE CARD GAME OF 21			
SB0214	1/28	2/20		PASS AS AMENDED		2/20
TOWE, TOM			INCREASE DOLLAR AMOUNT SUBJECT TO CIVIL JURISDICTION IN CERTAIN COURTS			
SB0227	1/30	2/08		TABLED ON 02/12		
YELLOWTAIL JR., BILL			LIMIT TO 500 THE GAMBLING MACHINES A DISTRIBUTOR CAN HAVE AN INTEREST IN			
SB0228	1/30	2/08		PASS AS AMENDED		2/19
YELLOWTAIL JR., BILL			INCREASE SALARIES FOR SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES			
SB0246	2/01	2/14		DO PASS		2/16
NATHE, DENNIS			EXTEND TERMINATION DATE FOR LIMITATIONS FOR CERTAIN LIABILITIES			
SB0249	2/01	2/14		PASS AS AMENDED		2/15
SVRCEK, PAUL			AMEND THE MONTANA CRIMINAL JUSTICE INFORMATION ACT			
SB0250	2/01	2/15		PASS AS AMENDED		2/16
KEATING, TOM			AMEND THE LAWS RELATING TO COMMITMENT OF DEVELOPMENTALLY DISABLED PERSONS			
SB0257	2/01	2/15		PASS AS AMENDED		2/16

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 14, 1991, at 10:00 a.m.

ROLL CALL

Members Present:
Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: Bruce Crippen (R)

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON SENATE BILL 246

Presentation and Opening Statement by Sponsor:

Senator Dennis Nathe, District 10, advised the Committee tort reform legislation, passed in June 1986, set limits on government liability at $750,000 per claim and $1.5 million per occurrence for economic and non-economic damages for a period of five years. He said this legislation is due to sunset, and the bill would put it into statute. Senator Nathe said there have been no problems with the limits during the past five years.

Proponents' Testimony:

Bret Dahl, Administrator, Tort Claims, Department of Administration (DOA), said he supported the bill which reenacts present limits, effective July 1, 1991.

Mr. Dahl explained that government liability was the topic in 1986, but has been under discussion since 1972. He told the Committee he believes there is no reason for another sunset or expiration date.

Stan Kalyczek, Helena attorney, explained that the Montana Municipal Insurance Authority has been in operation since 1986. He said there are 107 cities and towns in the pool which was established in March, 1986. He told the Committee $6.25 million in bonds were issued to citizens to capitalize the liability program, which has never had a catastrophic claim come near present limits.

Robert McGlenn, Executive Director, Independent Insurance Agents of Montana, requested that the Committee consider changing the limits to make it easier for insurance agents. He said these figures are unique to the insurance industry and require patchwork to meet. Mr. McGlenn stated that the per person limit could be replaced by an occurrence limit. He said he is not asking for an amendment, but that the Committee consider making it easier for the insurance marketplace.

Mike Sherwood, Montana Trial Lawyers Association, said he supported the bill with his proposed amendment (Exhibit # /). He explained that, although this legislation was passed in 1986, it was revised and extended for four years in 1987. Mr. Sherwood said "a similar bill in 1979 was held unconstitutional in 1983, so the 1983 Legislature passed 2-9-107, MCA, which was overruled in 1989."

Mr. Sherwood advised the Committee his amendments would change the limits to $1 million and $2 million, because of inflation. He said he used a "very conservative" five percent cost-of-living increase. Mr. Sherwood asked the Committee to review his amendment, and said it might be better for the insurance companies.

Alec Hansen, Montana League of Cities and Towns, and General Manager, Montana Municipal Insurance Authority, advised the Committee inflationary adjustments were made in 1986 from 1973 levels of $300,000 and $1 million. He said the program was set up with the 1986 limits in mind, and that if these limits were raised the Authority might have to reissue bonds and revise the entire program.

Mr. Hansen told the Committee this program is vital to cities and towns in Montana, and urged them to support the bill.

Opponents' Testimony:

There were no opponents of SB 246.

Questions From Committee Members:

Senator Harp asked Alec Hansen how funding is sitting now. Alec Hansen replied that the liability pool is in very good shape, and that the Authority is able to maintain premium rates

essentially as they were in the beginning of the program. He added that it is going very well.

Senator Harp asked if premiums were considered to be less than those in the private sector. Alec Hansen replied he was not sure, but felt the rates were competitive. He said the program gets more people because of its consistency.

Chairman Pinsoneault asked Mike Sherwood about Alec Hansen's concerns with changing liability limits. Mike Sherwood replied it is more important for review down the road than to up the rates right now.

Senator Towe asked what the court means by "economic interests". Mike Sherwood replied that in White and Post the court said the ability to tax less was not a compelling state interest, but did not say that in Meech. He said that if Senator Towe were looking for language dealing on a historical basis only, it would be the ability to tax less.

Senator Towe asked John Maynard, former Tort Claims Division Administrator, to comment. Mr. Maynard replied that in 1987 when the Legislature was looking at the language in Post, it also looked at the state of the Montana budget which projected a $38 million shortfall in the insurance fund. He said this amount has now been reduced to $9 million in unfunded liability, but the state would argue that in order to pay tort claims it needs another $9 million. He said this money would have to come from something else, and that liability is the "economic interest" under discussion. Mr. Maynard explained that the problem in Post was there was no evidence of a compelling state interest in the legislative language of 1983. He said that if an evidentiary showing can be made on a rational basis, it can be done with legislative records. He commented that he has an actuarial report to submit to the Committee as an argument.

Senator Towe advised the Committee that he and former Senator Turnage (now Chief Justice) helped write this legislation. John Maynard replied he believes the 1983 language is good, but in Post there was no factual record of rational basis.

Senator Towe asked if one could point to the limit of finances in state government. Mr. Maynard replied that one could.

Senator Grosfield asked if the Legislature is really telling the general public is it not sure what correct state policy to have. He commented that if the bill is enacted as it is, it could be subject to periodic legislative review to meet changing levels. Mike Sherwood responded that it is not a matter of what the Legislature is telling the public, but of what the Legislative body is doing. He said there is more friction between the Supreme Court and the Legislature over this one issue, than any others. He stated the problem was there was not fact-finding in the preamble to support the legislation. Mr. Sherwood added that there should

be periodic review of limits, and that if four years from now the economic interest is there, the limits could be changed. He said he did not believe the Supreme Court would see this as a defensive measure, but a responsible measure.

Senator Towe asked Roger McGlenn to comment on Mike Sherwood's proposed amendment to change limits. Mr. McGlenn replied it is not the position of independent agents to tell the Legislature what limits should be. Jackie Terrell, American Insurance Association, replied she would rather not comment.

Closing by Sponsor:

Senator Nathe stated the position of DOA is to terminate the sunset provision and leave limits as they are.

HEARING ON SENATOR SENATE BILL 249

Presentation and Opening Statement by Sponsor:

Senator Paul Svrcek, District 26, said SB 249 would amend the Criminal Justice Information Act in four areas. He advised the Committee that page 4, line 3 makes it clear that federal agencies fall within the statute definition, and are privy to information; and page 6, lines 13-14 clean up confidential criminal justice information language. He said there are also changes on page 9, lines 9-15, and page 10, lines 1-3, and that the Department of Justice (DOJ) would offer amendments.

Proponents' Testimony:

Paul Johnson, Assistant Attorney General, DOJ, advised the Committee he has been working with the Criminal Justice Information Act and found a few flaws which need clearing up. He said he would be available to answer questions relating to the changes.

Opponents' Testimony:

There were no opponents of SB 249.

Questions From Committee Members:

Senator Grosfield asked if the definitions were generic to criminal justice agencies. Paul Johnson replied the definition provided in the bill on page 4 relegates the functions of virtually all peace officers, and some are designated by executive order. He explained that DOJ, as a whole, is a criminal justice agency, and that investigators with the Department of Commerce are also designated as a criminal justice agency.

Chairman Pinsoneault asked if federal presumption were not the case here. Paul Johnson replied that the whole federal system was in place when this legislation was drafted in 1979 to dovetail with

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 14 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen			
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

EX 1
SB246
2-14-91

Testimony of Michael Sherwood
MTLA
Supporting SB 246, with amendments

Section 2-9-108 MCA reads as follows:

2-9-108. (Temporary) **Limitation on governmental liability for damages in tort.** (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for damages suffered as a result of an action or omission of an officer, agent, or employee of that entity in excess of $750,000 for each claim and $1.5 million for each occurrence.

8(2) No insurer is liable for excess damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitations specifically waived. (Terminates June 30, 1991--sec. 1, Ch. 228, L. 1987)

This law was enacted in 1986 as Chapter 22 of the Special Laws of June 1986. It was effective July 10, 1986 and terminated June 30, 1987. In 1987 the legislature extended the effective period of the statute to June 30, 1991, by passing Section 1, Chapter 228, Laws of 1987.

2-9-104, a predecessor to this statute had been enacted in 1979. It was held unconstitutional in 1983 as a violation of a fundamental right to "bring an action for a personal injury" in the case of White v. State.

In reaction to that case the 1983 Legislature repealed 2-9-104 and enacted 2-9-107. This time the limitations found in the statute were prefaced with multiple legislative findings to justify the legislation. In 1985 the Supreme Court rejected those findings as not showing a compelling state interest sufficient to denigrate the fundamental right of "full legal redress" in the case of Pfost v. State.

White and Pfost were overruled by the Montana Supreme Court in 1989. The court reversed it's prior holdings that such legislation denigrated a fundamental right and therefore required a compelling state interest. Instead, the court required only that the legislation's disparate treatment of similar claims be "rationally related" to a legitimate state interest. That interest was the promotion of Montana's economic interests. This rationale is found in several decisions, including Meech v. Hillhaven West, Inc..

In order to insure that 2-9-108 is not voided by the Supreme court in the future, the legislature should do two things:

1. Continue to provide for periodic review of these

Exhib. F
2-14-91
SB 246

limitations in order to insure that the limits bear a rational relation to the promotion of Montana's economic interests. For that reason, I propose that rather than remove the termination date for the limitation on damages, this body extend that termination date for an additional two years. I have attached a proposed amendment for that purpose.

2. Take the opportunity to review the present limits to see if they are rational. If the limits were rational in 1986, some five years ago, then perhaps they only continue to be so it adjusted by a minimal cost of living increase. If a 5% per annum increase is applied the figures should be adjusted by a factor of 1.28. In other words the figures should be adjusted to $960,000 for each claim and $1.82 million for each occurrence.

One other factor demands review. Insurance companies don't issue policies on a regular basis for such odd numbers, either the current numbers of those resulting from a cost of living increase. [illegible] policies for round numbers, e.g. 1 million, 2 million, etc. Even the self insured local governments are obtaining excess insurance coverage above certain round numbers.

For the foregoing reasons, I ask the committee to amend the current language to adjust the caps to $1 per claim and $2 million for each occurrence.

Exhibit
2-14-91
SB 246

Proposed amendments of Michael Sherwood, MTLA

At Line 5, after "ACT",

STRIKE: "REMOVING", and
INSERT: "EXTENDING"

At Line 6, after "FOR",

INSERT: "AND RAISING"

At Line 16, after "~~date.~~",

INSERT: "TERMINATION DATE."

At line 19, after "~~1991.~~",

INSERT: "SECTIONS 1 AND 1 OF THIS ACT TERMINATE ON JUNE 30, 1993."

At line 20,

INSERT: **"Section 2.** Section 2-9-108, MCA, is amended to read:

2-9-108. (Temporary) **Limitation on governmental liability for damages in tort.** (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for damages suffered as a result of an action or omission of an officer, agent, or employee of that entity in excess of $1 million ~~$750,000~~ for each claim and ~~$1.5~~ $2 million for each occurrence.

8(2) No insurer is liable for excess damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitations specifically waived.

At line 20, after "Section",

STRIKE: 2
INSERT: 3

Ex. 1a
2-14-91
SB 246

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 11 day of February, 1991.

Name: Ruth Daly

Address: 547 Tola Court

Telephone Number: 458-6247

Representing whom?

Tort Claims Division

Appearing on which proposal?

SB

Do you: Support? X Amend?____ Oppose?____

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Ex. 1a
2-14-91
SB 246

February 14, 1991

TESTIMONY IN SUPPORT OF H.B. 246

AN ACT REMOVING THE TERMINATION DATE
FOR LIMITATIONS ON GOVERNMENTAL LIABILITY
FOR DAMAGES IN TORT ACTIONS

Mr. Chairman, Members of the Committee, My name is Brett Dahl. I'm the Administrator of the Tort Claims Division, Department of Administration.

We support H.B. 246, which proposes to remove the termination date of June 30, 1991 and to re-enact the present liability limits ($750,000 per claim and $1,500,000 per occurrence) which plaintiffs may recover from the state for damages in tort actions effective July 1, 1991.

I would like to provide a brief historical perspective. Limits on governmental liability have been the topic of much discussion in the Legislature and at the Supreme Court since 1972, when the State of Montana lost its sovereign immunity and was no longer immune from lawsuit.

The limits have changed over the years to include recovery for non-economic damages. In addition, the limits have been modified by the Supreme Court and the Legislature where a compelling interest existed, or to provide full legal redress to plaintiffs seeking economic or non-economic damages from the state.

Most recently, in 1986, the limits were set at $750,000/$1,500,000 for both economic and non-economic damages. The liability limits in effect, were given a 5 year trial period with a sunset date of June 1991 at which point the limits expire.

We respectfully request re-enactment of the present limits effective July 1, 1991. The present limits have been in effect for the past 5 years and have never been challenged by plaintiffs.

We also submit that there is no need to establish another sunset or expiration date at this point in time. If changes to the limits are necessary, legislation may be introduced by interested parties to that effect. Additionally, the limits are constantly being reviewed by the Supreme Court who will modify the present limits if they feel that there is a compelling reason to do so.

THANK YOU FOR YOUR CONSIDERATION.

Amendments, Discussion, and Votes:

Senator Towe reported that the Subcommittee adopted 1, 2, 3, and 4 of the amendments proposed by the Montana League of Cities and Towns. He said the Subcommittee did not accept subsection (4), nor amendment 5, but did adopt amendment 6 (911 emergency). Senator Towe continued, and said the Subcommittee adopted self-insurance coverage, and Greg Petesch reported that amendment 7 is included in school board immunity.

Senator Svrcek made a motion that the proposed amendments be approved. The motion carried with all members voting aye except Senator Halligan. Senator Doherty was absent.

Senator Mazurek said he was curious as to why subsection (4) was not adopted by the Subcommittee. Greg Petesch replied that the adoption of zoning plans is a legislative act. Senator Towe stated that the Subcommittee talked about getting into court before administrative remedy is completed, and decided it was not necessary.

Senator Mazurek made a motion that subsection (4) as it was written in the draft, be reinserted in the bill "immunity from suit for damages" only. As an example, he said that if someone did not like a zoning decision they may want to sue the city for damages. Senator Svrcek reminded Senator Mazurek that he made a motion to this effect during prior executive action on SB 154, and it was explained then that these are quasi-judicial or executive and not legislative acts.

Greg Petesch advised the Committee that SB 154 is here because the Supreme Court said everything is a legislative act. He commented that Representative Whalen has a bill addressing this issue. Senator Mazurek withdrew his motion.

Recommendation and Vote:

Senator Towe made a motion that SB 154 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 246

Motion:

Senator Grosfield made a motion that SB 246 DO PASS.

Discussion:

Senator Svrcek requested a sense of the Committee on extending review of liability limits for another four to six years. He commented that from a public policy standpoint, maybe the Legislature should review these limits periodically.

Senator Harp stated he opposed that action.

Senator Towe suggested that the limits could be raise to $1 million and $2 million. Senator Crippen replied they should be left as they are.

Chairman Pinsoneault commented that the bill puts finality in the law and that the process seems to have worked.

Senator Grosfield stated there is no security if there is not a revisiting period.

Amendments, Discussion, and Votes:

Recommendation and Vote:

The motion made by Senator Grosfield carried with all members voting aye, except Senator Svrcek who voted no. Senator Doherty was absent.

EXECUTIVE ACTION ON SENATE BILL 257

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Harp made a motion that "must" be deleted and "shall" be inserted on page 3, line 14. The motion carried unanimously.

Senator Mazurek made a motion that advisory council be deleted from sections 1 and 2 and that the title be changed correspondingly. He said this power is authorized in 2-15-122, MCA, and that he believed leaving it in the bill could run into trouble. Greg Petesch commented that he questioned codifying an advisory council when the bill came in.

Senator Grosfield stated he had hesitant feelings about advisory councils and their cost to state government. He said 2-15-102.8, defines advisory councils and says most are not legal to begin with. He further stated that statute says the advisory councils are not meant to set policy or perform administrative functions, but to comply with federal regulations.

The motion made by Senator Harp carried 10 to 1 with all members voting aye except Senator Towe who voted no. Senator Doherty was absent.

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 16 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty		✓	
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 246 (first reading copy -- white), respectfully report that Senate Bill No. 246 do pass.

Signed: _____
Richard Pinsoneault, Chairman

2-16-91
Amd. Coord.

2-16-91
Sec. of Senate

CHAIRMAN--BILL STRIZICH
NORMAL SCHEDULE==> SITE: ROOM 312-2 DAYS: M,T,W,T,F TIME: 8:00 A.M.

SECRETARY-JEANNE DOMME

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0198	2/12	3/20		CONCUR		3/20
BROWN, BOB			CORRECT HOUSING DISCRIMINATION CITATION ERROR			
SB0199	2/13	3/20		CONCUR		3/21
BROWN, BOB			AMEND HOUSING DISCRIMINATION LAWS TO CONFORM TO FEDERAL LAW			
SB0204	2/15	3/06		CONCUR AS AMENDED		3/11
GAGE, DEL			PROVIDE ALTERNATIVE SENTENCING FOR FELONY OFFENSES RELATED TO DANGEROUS DRUG			
SB0214	3/04	3/12		CONCUR		3/12
TOWE, TOM			INCREASE DOLLAR AMOUNT SUBJECT TO CIVIL JURISDICTION IN CERTAIN COURTS			
SB0228	3/04	3/08		CONCUR		3/12
YELLOWTAIL JR., BILL			INCREASE SALARIES FOR SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES			
SB0246	3/04	3/13				
NATHE, DENNIS			EXTEND TERMINATION DATE FOR LIMITATIONS FOR CERTAIN LIABILITIES			
SB0249	3/04	3/07		CONCUR AS AMENDED		3/11
SVRCEK, PAUL			AMEND THE MONTANA CRIMINAL JUSTICE INFORMATION ACT			
SB0250	3/04	3/15		CONCUR AS AMENDED		3/15
KEATING, TOM			AMEND THE LAWS RELATING TO COMMITMENT OF DEVELOPMENTALLY DISABLED PERSONS			
SB0257	3/04	3/15		CONCUR		3/15
GAGE, DEL			CLARIFY STATUS OF CERTAIN PERSONNEL OF THE DEPARTMENT OF JUSTICE			
SB0270	3/04	3/13		CONCUR AS AMENDED		4/01
WILLIAMS, BOB			LEGALIZE AND REGULATE AMUSEMENT GAMES			
SB0293	3/04	3/15		CONCUR		3/19
DOHERTY, STEVE			INCREASE JURISDICTION OF MUNICIPAL COURTS			

Jacqueline Terrell, American Insurance Association, stated that the American Insurance Association is not taking a position on what you determine to be the appropriate public policy with respect to sovereign immunity; however, they are in favor of the amendments in this bill with respect to insurance coverage. Mr. Sherwood indicated to you that if you allow immunity to not be waived when there is insurance coverage, that it would effect in affect unjustly enrich insurance companies. She submitted that it puts the process in slightly the opposite order. If one does not treat everyone similarly under this law, what one is doing is putting the insurance company, that is going to underwrite the risk, in the position of trying to guess whether there is immunity or whether there is not immunity. That is going to make the underwriting much more difficult. The insurance company will have to err on the side of caution and is going to increase the cost of insurance coverage should the entity choose to insure and thus decrease insurance availability. She felt that if the committee chooses to pass this bill, her association would request that the amendments with regard to insurance coverage in place be left in the bill.

Phil Campbell, Montana Education Association, stated his association want to go on record in support of this bill. It will put things back where they were and should still be. He stated that the association takes no position on the amendments.

Jim Jenson, Montana Environmental Information Center, stated that if this bill does not come out of this committee with a favorable vote then we will urge the Senate to move SB 691 through. The point of this bill is that the people who live in the dump here in Helena, have had their ground water contaminated and subsequently lost their home or become divorced, will have a way to get the county into court. We urge you to understand there are people who are directly affected by this problem unfairly.

J. Michael Young, Attorney - State Tort Claims Division, gave written testimony in favor of SB 154. EXHIBIT 2

Opponents' Testimony:none

Questions From Committee Members:none

Closing by Sponsor:

SEN. NATHE stated that he would like this committee to not take any action on this bill today and wait for the Senate to hear the quasi-judicial tomorrow morning.

HEARING ON SB 246
REMOVE TERMINATION OF TORT LIABILITIES LIMITS

Presentation and Opening Statement by Sponsor:

SEN. NATHE, SENATE DISTRICT 10, stated that SB 246 is a bill to

take the sunset provision off a law that passed in June of 1986 that placed caps on the limits of liability to local government. These caps were placed at $750,000 and $1,500,000. He stated that the caps are to expire in June of 1991 and this bill would take the Sunset Provision off and extend it indefinitely. He stated that SB 246 was a compromised bill that was agreed upon in June of 1986 after a December 31, 1985 Supreme Court decision where the court said that the Legislature has no right to set any limits on any liabilities. He stated that people have to have a remedy for their wrongs, but at the same time the state cannot open up the pocket book of the tax-payer for being liable without limits.

Proponents' Testimony:

Alec Hansen, Montana League of Cities and Towns, stated that the limited liabilities in SB 246 is critical to the operations of cities and towns for the program of self-insurance operations. He stated that the League is paying legitimate claims to people who file law suits against the city and the League's policy includes the same limits as the Sunset Provision. He felt that if SB 246 is not adopted and there is not limits then there will be an increase on the premiums on the cities and towns. Mr. Hansen urged the committee to support the bill as it came from the Senate.

Brett Dahl, Administrator - Tort Claims Division, Department of Administration, gave written testimony in favor of SB 246. EXHIBIT 3

David Hull, Attorney - City of Helena, stated that the City of Helena is in support of SB 246.

Michael Sherwood, Montana Trial Lawyers Association, gave written testimony in favor of HB 246. EXHIBIT 4

Opponents' Testimony: NONE

Questions From Committee Members:

REP. WHALEN asked **Mr. Dahl** once the second cap is reached, aren't umbrella policies that will carry up to $10,000,000 relatively cheap? **Mr. Dahl** stated that in terms of the insurance, they are not relatively cheap. One reason the limits were established and capped in 1986 was because of the availability of insurance.

REP. WHALEN asked **Mr. Dahl** if he felt that $1,500,000 was a low cap? **Mr. Dahl** said that he felt the cap was not low and that the limits are good where they are set at the present time.

REP. WHALEN asked **Mr. Maynard** how much of the cap on the occurrence claims contributed to the reduction of 38 to 18 in tort claims? **Mr. Maynard** stated that there were less than 5 cases there were occurrence limited. He stated that when those

accuracies sat down with him and he gave them his best assessment, there was only one claim that pierced that 1.5 million dollars cap.

REP. TOOLE asked **Mr. Dahl** if there was anything the Department has done as far as reviewing the continuing of the caps? **Mr. Dahl** stated that the Department has not done any type of review for the need for the caps.

REP. WHALEN asked **SEN. NATHE** if he would object to raising the cap up to 5 million? **SAN. NATHE** stated that the caps as they are set have been successful up to this point. He stated that he would caution Rep. Whalen about going that high.

Closing by Sponsor:

SEN. NATHE stated that SB 246 is needed because caps are needed. He asked the committee to give SB 246 a favorable consideration.

HEARING ON SB 361
BILL GENERALLY REVISING AIRPORT AUTHORITY ACT; NOISE LIABILITY; TAX AREA

Presentation and Opening Statement by Sponsor:

SEN. [illegible], [illegible] DISTRICT 19, stated that SB 361 will make clear that airport authorities as governmental entities are immune from their legislative acts. The request by the airport authorities is not any different than the issue regarding immunity, the bill only clarifies that airport authorities enjoy whatever immunity that is given to other governmental entities.

Proponents' Testimony:

Monte Eliason, Montana Airport Managers Association, Airport Manager - Glacier National Airport in Kalispell, stated that SB 361 is a combination of two years of gathering comments from airports across the state in an attempt to clarify provisions of the airport authority Act which has been on the books in Montana for 20 years. He stated that the bills purpose is to clarify and make consistent the treatment of Airport Authorities under Montana Law. He stated that the bill does not effect any revenue or expenses for any city or state owned airport, but is simply a matter of clarification. Mr. Eliason stated that the changes made in the Senate are accepted by the Association and support the bill as it appears before the committee today.

Anne Wolfinger, Helena Regional Airport Board, stated that SB 361 assures treatment of Airport Authorities, under the law, to be consistent and in line with the treatment of other public bodies under the law. She stated that she is particularly in support of section 4 which allows for the inclusion of Airport Authorities in the definition of non-profit corporation regarding the

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 3-13-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI			
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

Ex. 4
3-13-91
SB 246

Proposed amendments of Michael Sherwood, MTLA

1. At Line 5, after "ACT",

STRIKE: "REMOVING", and
INSERT: "EXTENDING"

2. At Line 6, after "FOR",

INSERT: "AND RAISING THE"

3. At line 16, after "~~dates.~~",

RE-INSERT: "-- TERMINATION DATE."

4. At line 20, after "199~~1.~~",

INSERT: "EXCEPT THAT SECTION 3 IS EFFECTIVE JULY 1, 1995. SECTIONS 1 AND 2 OF THIS ACT TERMINATE ON JUNE 30, 1995."
and
STRIKE: All of lines 21 and 22.

5. At line 23,

INSERT: "**Section 2.** Section 2-9-108, MCA, is amended to read:

2-9-108. (Temporary) **Limitation on governmental liability for damages in tort.** (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for damages suffered as a result of an action or omission of an officer, agent, or employee of that entity in excess of $1 million ~~$750,000~~ for each claim and ~~$1.5~~ $2 million for each occurrence.

8(2) No insurer is liable for excess damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitations specifically waived.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on April 4, 1991, at 11:30 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Bécker (D)
Dave Brown (D)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Boharski, Rep. Clark, and Rep. Nelson.

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON SB 246

Motion: **REP. WHALEN MOVED SB 246 DO BE CONCURRED IN AS AMENDED.**

Discussion: **REP. WHALEN** stated the sub-committee was in agreement that we needed to pass the bill to cap the local government in city and towns. We need to pass the bill over to the Senate with all the caps in place. Our only concern is that we cannot control what the Senate will do to this bill. We have agreed to put some amendments on this bill, send it over to the Senate, have the Senate reject those amendments and that would

give us the time we need to work out the specific language we want for this bill.

REP. RICE stated it is a little odd, conceptually, sticking quasi-judicial immunity into a tax bill. I think a question was whether that was permissible amendment. We came to the conclusion that we could probably do it. We don't want to jeopardize Senator Nathe's bill on the floor today and put quasi-judicial immunity in this bill.

REP. TOOLE stated I think everybody is in agreement that this bill needs to pass. Putting quasi-judicial immunity into this bill will not jeopardize it and come back in a couple of weeks to see what we want to do with quasi-judicial immunity.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 344

Motion: **REP. GOULD MOVED SB 344 BE RECONSIDERED.**

Discussion: **REP. GOULD** stated this is a good bill and I would like to see the committee bring it back from the table and pass it out of the committee.

Vote: Motion failed 8 to 9. **EXHIBIT 1**

ADJOURNMENT

Adjournment: 11:49 A.M.

BILL STRIZICH, Chair

JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 4-4-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI		✓	
REP. DAVE BROWN	✓		
REP. ROBERT CLARK		✓	
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON		✓	
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

HOUSE STANDING COMMITTEE REPORT

April 4, 1991

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 246 (third reading copy -- blue) be concurred in as amended.

Signed: _____
Bill Strizich, Chairman

CARRIED BY: REP. J. Rice

And, that such amendments read:

1. Title, line 5.
Strike: "REMOVING"
Insert: "EXTENDING"

2. Title, line 7.
Following: "ACTIONS;"
Insert: "REVISING THE LAW RELATING TO JUDICIAL AND QUASI-JUDICIAL IMMUNITY;"

3. Title, lines 8 and 9.
Strike: "3, CHAPTER 22, SPECIAL LAWS OF JUNE 1986"
Insert: "2-9-112, MCA"

4. Title, line 10.
Following: "DATE"
Insert: "AND AN APPLICABILITY DATE"

5. Page 1, line 20.
Following: "~~1991.~~"
Insert: "Sections 1 and 2 of this act terminate on June 30, 1993."

6. Page 1.
Following: line 20
Insert: "NEW SECTION. Section 2. Immunity from suit for judicial acts and omissions. (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from his lawful discharge of an official duty associated with judicial actions of the court.

(3) As used in this section, the term "judiciary" means only those courts established in accordance with Article VII of

The Constitution of the State of Montana. The term does not include executive or administrative agencies of the state and other governmental units exercising quasi-judicial authority.

(4) To the extent that this section denies judicial immunity to executive or administrative agencies exercising quasi-judicial authority of the state and other governmental units, this section specifically revises the common-law rule of quasi-judicial immunity as it might otherwise apply to executive or administrative agencies.

Renumber: subsequent sections

7. Page 1, lines 21 and 22.
Strike: "3, CHAPTER 22, SPECIAL LAWS OF JUNE 1986"
Insert: "2-9-112, MCA"

8. Page 1.
Following: line 22
Insert: "NEW SECTION. Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 2, chapter 9, part 1, and the provisions of Title 2, chapter 9, part 1, apply to [section 2].

NEW SECTION. Section 5. Applicability. [This act] applies to causes of action arising on or after [the effective date of this act]."

Renumber: subsequent section